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Information and communications technologies for development

Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union

Note verbale dated 20 April 2016 from the Permanent Mission of Bangladesh to the United Nations addressed to the Secretary-General

The Permanent Mission of the People's Republic of Bangladesh to the United Nations presents its compliments to the Secretary-General and, on behalf of Bangladesh in its capacity as Chair of the Governing Council of the Inter-Parliamentary Union, has the honour to transmit herewith the text of the resolution entitled "Democracy in the digital era and the threat to privacy and individual freedoms", adopted unanimously on 21 October 2015 by the 133rd Assembly of the Inter-Parliamentary Union, held in Geneva (see annex).

The Permanent Mission requests that the present note verbale and its annex be circulated as a document of the General Assembly, under agenda items 17 and 124.

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Annex to the note verbale dated 20 April 2016 from the Permanent Mission of Bangladesh to the United Nations addressed to the Secretary-General

[Original: English and French]

Democracy in the digital era and the threat to privacy and individual freedoms

Resolution adopted unanimously on 21 October 2015 by the 133rd Assembly of the Inter-Parliamentary Union, held in Geneva,

The 133rd Assembly of the Inter-Parliamentary Union,

Recalling the guiding principles of the Charter of the United Nations,

Also recalling the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

Further recalling the resolution The role of parliaments in striking a balance between national security, human security and individual freedoms, and in averting the threat to democracy adopted by the 118th IPU Assembly (Cape Town, April 2008),

Noting United Nations General Assembly Resolution 69/166 The right to privacy in the digital age of 18 December 2014,

Also noting the report of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age,

Recalling the United Nations Guiding Principles on Business and Human Rights, and bearing in mind that civil society and business entities can play an important role in either enhancing or diminishing the enjoyment of human rights, including the right to privacy and freedom of expression in the digital era,

Considering that fundamental rights also apply in cyberspace,

Acknowledging the interdependence between democracy and the right to privacy, freedom of expression and information and an open and free Internet, and in view of the universal recognition of the right to privacy, its protection in international law and the expectations of citizens around the world that the right to privacy is safeguarded both in law and in practice,

Also acknowledging that, in the area of digital surveillance, it is not enough simply to adopt and enforce legislation and that procedural safeguards are sometimes weak and oversight ineffective,

Expressing concern that mass surveillance programmes regarding digital communications and other forms of digital expression constitute violations of the right to privacy, including when conducted extraterritorially, and endanger the rights to freedom of expression and information, as well as other fundamental human rights, including the rights to freedom of peaceful assembly and of association, thus undermining participative democracy,

Acknowledging the need for capacity-building, for the empowerment of parliamentarians and parliamentary specialized bodies in the identification of legislative gaps, for the enactment of legislation dealing with the protection of human rights, including the right to privacy, and for the prevention of the violation of such rights,

Affirming the responsibility of parliaments to establish, in line with international principles and undertakings, a comprehensive legal framework to exercise effective oversight of the actions of government agencies and/or surveillance agencies acting on their behalf, and to ensure accountability for all violations of human rights and individual freedoms,

Expressing the need to engage and consult with all relevant stakeholders, including civil society groups, academia, the technical community and the private sector on policy-making related to the digital era,

Acknowledging the importance and expertise of national human rights institutions, non-governmental organizations and human rights advocates, and their role in monitoring, policy-making, consultation and awareness-raising, and welcoming greater cooperation between these organizations and advocates, parliaments and parliamentarians worldwide,

Taking note of the work and contribution of these entities, such as the International Principles on the Application of Human Rights to Communications Surveillance (the Necessary and Proportionate Principles), endorsed by more than 400 non-governmental organizations and the Global Network Initiative,

Affirming the need for secure and uncompromised systems of communication for the public good and the protection of basic rights,

Considering the findings of the report of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on the use of encryption and anonymity,

Recognizing the contribution of parliaments to, and their impact on, decisions facilitating the national and international consensus needed for concerted and effective action on these issues,

1. *Calls on* parliaments to take part in the development and implementation of an overall strategy to enable in the long run the whole population to enjoy the considerable benefits that the Internet can bring to economic, social, cultural and environmental life in order to achieve the Sustainable Development Goals adopted by the United Nations;

2. *Underlines* that this overall strategy should aim both legally and ethically to build a digital ecosystem that is capable of guaranteeing the same rights to all citizens and ensuring that their freedom is effectively protected, particularly in terms of educating all people in digital know-how, and ensuring an equity between actors that will avoid any abuse of a dominant position;

3. *Underscores* that all legislation in the field of surveillance, privacy and personal data must be based on the principles of legitimacy, legality, transparency, proportionality, necessity and the rule of law;

4. *Calls on* parliaments to review their national frameworks and State practices with a view to promoting and increasing public participation and

involvement in the digital era, free exchange of information, knowledge and ideas and equal access to the Internet and, with a view to enhancing democracy in the 21st century, encourages parliaments to remove all legal limitations on freedom of expression and the flow of information and to uphold the principle of Net neutrality;

5. *Urges* parliaments to carefully review national laws and the practices of government agencies and/or surveillance organizations acting on their behalf so as to make sure that they comply with international law and human rights, especially as they relate to the right to privacy, and calls on parliaments to guarantee, as part of that review, that private and public companies will not be forced to cooperate with the authorities on practices that impair their customers' human rights, with the exceptions provided for in international human rights law;

6. *Calls on* parliaments to ensure that national legal frameworks comply fully with international human rights law when applied to interception, analysis, collection, storage and commercial use of data and to share reviews and information from individual States and the IPU on related cases;

7. *Urges* parliaments to review their legislation in order to prohibit the interception, collection, analysis and storage of personal data, including when those actions are of an extraterritorial or bulk nature, without the informed consent of the individuals concerned or a valid order granted by an independent court on grounds of reasonable suspicion of the targets' involvement in criminal activity;

8. *Underscores* that privacy protections must be consistent across domestic and international borders and calls on parliaments to make sure that privacy protections in national law cannot be bypassed by reliance on secretive and informal data-sharing agreements with foreign States or multinationals;

9. *Calls on* parliaments to enact comprehensive legislation on data protection, for both the public and private sectors, providing, at the minimum, for strict conditions regarding permission to intercept, collect, analyse and store data, for clear and precise limitations on the use of intercepted and collected data, and for security measures that ensure the safest possible preservation, anonymity and proper and permanent destruction of data; and recommends the establishment of independent and effective national data-protection bodies with the necessary power to review practices and address complaints, while further urging parliaments to ensure that their national legal frameworks on data protection are in full compliance with international law and human rights standards, making sure that the same rights apply to both offline and online activities;

10. *Also calls on* parliaments to ensure through legal means that all collaboration on various surveillance programmes between governments and companies, entities and all other organizations is subject to parliamentary oversight, insofar as it does not hamper the conduct of criminal investigations;

11. *Further calls on* national parliaments and governments to encourage the private technology sector to honour its obligations to respect human rights, bearing in mind the Guiding Principles on Human Rights and Business, as customers of these companies must be fully informed of how their data is being gathered, stored, used and shared with others, and further calls on parliaments to promote both global norms on user agreements and more development of user-friendly data-protection techniques which counter all threats to Internet security;

12. *Urges* parliaments to reject the interception of telecommunications and espionage activities by any State or non-state actor involved in any action, which negatively affects international peace and security, as well as civil and political rights, especially those enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights, which states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" and that "everyone has the right to the protection of the law against such interference or attacks";

13. *Recognizes* the need for parliaments to specify, in relative detail, the circumstances under which any interference with the right to privacy may be permitted, to establish strict judicial procedures for the authorization of communications surveillance and to monitor the implementation of those procedures, limits on the duration of surveillance, security and storage of the data collected, and safeguards against abuse;

14. *Emphasizes* that while national security arguments will invariably be advanced that diverse digital technology tools may threaten the security and well-being of a State, parliaments need to review their capacity to oversee all executive action and ensure that a balance is struck between national security and individual freedoms so as to ensure that measures taken in the name of national security and counter-terrorism comply strictly with human rights, and avert any threats to democracy and human rights;

15. *Strongly urges* parliaments to review and establish effective, independent and impartial oversight mechanisms where needed and include them in the legal framework; stresses that parliaments must investigate any shortcomings in their oversight function and the reasons behind them, making sure that their oversight bodies, such as parliamentary committees and parliamentary ombudsmen, have sufficient resources, proper authorizations and the requisite authority to review and publicly report on the actions of government agencies and/or surveillance agencies acting on their behalf, including actions in cooperation with foreign bodies through the exchange of information or joint operations;

16. *Calls on* parliaments to acknowledge that civil society and public participation can play a vital role in monitoring the executive branch and encourages parliaments and parliamentarians to promote and engage in consultation and to welcome assistance from all stakeholders, including national human rights institutions, the private sector, civil society, the technical community, the academic community and users, in their monitoring, policy-making and policy implementation efforts;

17. *Strongly urges* parliaments to ensure that attempts to restrict democratic voices online, including journalists, other media actors and human rights defenders, through imprisonment, harassment, censorship, hacking, illicit filtering, blocking, monitoring and other repressive means are strictly forbidden in national legislation in accordance with international human rights law, treaties and conventions;

18. *Strongly recommends* that parliaments, as part of their oversight function, enact coherent and comprehensive legislation on the protection of whistle-blowers in line with international standards and best practices;

19. *Calls on* parliaments to uphold both governmental and corporate accountability for violations of human rights, such as the right to physical and

psychological integrity, the right to privacy, freedom of expression and other individual freedoms, so that such accountability includes adequate sanctions to ensure justice and to act as a deterrent, including criminal prosecution, administrative fines, suspension or withdrawal of business licences, and the payment of reparation to individuals for harm caused;

20. *Also calls on* parliaments to ensure that the necessary legal and administrative measures are taken to combat trafficking in persons perpetrated through the Internet, and to combat gender-based harassment and cyber-violence that targets, in particular, women and children;

21. *Underscores* the right to effective remedy for victims of violations of the right to privacy and other individual freedoms and calls on parliaments to provide for procedural safeguards in law, thereby facilitating access to duly implemented remedies;

22. *Strongly urges* parliaments to enable the protection of information in cyberspace and associated infrastructure, so as to safeguard the privacy and individual freedom of citizens by developing formal as well as informal cooperation and relationships among nations to exchange information and share experiences; further calls on parliaments to carry out technical and procedural cooperation as well as to collaborate in order to mitigate the risk of cyber-crimes and cyber-attacks and, in this context, to modernize mutual legal agreements so as to address the multidimensional challenges of the digital era, including speed of response;

23. *Welcomes* the appointment of the United Nations Special Rapporteur on the right to privacy and calls on the IPU to initiate a dialogue with him as well as the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the United Nations Special Rapporteur on the situation of human rights defenders and the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and to work with them to produce a compilation of best legislative practices in this field;

24. *Calls on* Parliaments to ensure that their respective governments cooperate fully with the United Nations Special Rapporteurs on the right to privacy, on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders and on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including in relation to challenges arising in the digital age; invites parliaments to keep themselves informed of the Rapporteurs' recommendations, and to provide the necessary legislative framework for their implementation, as appropriate;

25. *Invites* the IPU to develop — in cooperation with relevant stakeholders, including international and regional organizations, civil society and human rights experts — capacity-building programmes for parliamentary bodies tasked to oversee observance of the right to privacy and individual freedoms in the digital environment.